THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 3734 of 2005

Date of Decision: 12 - 9 - 2006

Adarsh Bal Vidya Kendra Sr. Sec. School, Faridabad City **.....Appellant**

v.

The Board of Trustees and another **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Sanjeev Walia, Advocate
for the appellant.

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P.S.PATWALIA, J. (Oral)

Plaintiff has filed this regular second appeal aggrieved against the judgment of learned Additional District Judge, Faridabad whereby an appeal filed by the authorities under the provisions of Employees Provident Fund and Misc. Provisions Act, 1952 (hereinafter to be referred as, `the Act') was allowed and the suit filed by the plaintiff was dismissed after reversing the judgment of the trial Court which had decreed the suit.

It was the claim of the plaintiff that the school was not covered under the Act as the number of its employees had always been less than 20. The plaintiff had contended that in the list of 22 employees working on regular basis prepared in April, 1989 one Smt.Roopwati a part time Sweeper had been wrongly included. Also Sushila Rani, Jai Pratap Singh and one Beg Raj Sharma were wrongly included as they were casual employees of the school recruited hardly for 1 to 2 months.

The lower Appellate Court noted that the plaintiff had been given as many as 31 opportunities to appear before the authorities under the Act to prove the aforementioned facts. However, every time the President had appeared and requested for a date for production of record but in spite of availing so many opportunities did not produce any record. The relevant observations of the lower Appellate Court are as hereunder:-

> ".....Before raising the demand for above said amount ample opportunities of hearing were given to the plaintiff viz. For 31 times – 7 times in the year 1994, 12 times in the year 1995, 10 times during the year 1996 and 2 times in the year 1997. R.D.Bansal President had appeared on behalf of the school and requested for a date for production of record before the area enforcement officer but instead of availing of so many opportunities as mentioned above, did not produce any record for the purposes of assessing dues. Therefore, the Defendants were not left with any alternative but to proceed ex-parte in the matter and the report of Enforcement Officer was accepted and acted upon."

On merits it was also found that the plaintiff had interpolated the record in an effort to show as if Roopwati was a part time Sweeper and Beg Raj Sharma and two others were casual employees. These findings of fact recorded by the lower Appellate Court are as hereunder:-

> "11. The above stand which the plaintiff had taken before the ld. Lower Court does not appear to be correct. Firstly, for the reason that the list of 22 employees as shown in the Ex.D.1 might have been prepared in the hand of any one belonging either to the school or an official of Regional Provident Fund Commissioner. But the same was signed by R.D.Bansal, who is none-else but the President of the school. It now does not lie in his mouth to say that the same had

been prepared wrongly. Had it been so, he could have refused to sign the list and if not, he could have given his remarks that the number of employees was 19 and not 22. Secondly, the perusal of salary register Ex.P5 (Copy) which had been produced before Ld. Lower Court does not substantiate the stand of the plaintiff. Roopwati shown as part time sweeper had received pay of Rs.562/- (Rate of 450/- + DA of Rs.112/-) whereas full time social study teacher Kusum Rani was paid Rs.594/- (Rate of 475/- + DA of Rs.119/-). Looking at the nature of job and difference in pay of Rs.32/- only it is unbelievable that a part time sweeper and regular social study teacher would get almost equal pay. So, for that matter, the stand of plaintiff that Roopwati was employed in the school as part time sweeper cannot be taken to be proved from this and also that the entry of the part time sweeper in the pay register is mere interpolation in the record which is quite visible to the naked eye.

12. Further stand of the plaintiff that Sushila Rani, Jai Pratap Singh and Begh Raj Sharma were their casual employees whose stay in the school was for 1-2 months only also stands disproved from the school record. In Ex.P4 attendance register for March 1988 the name of Begh Raj Singh appears at serial No.13. It is not shown that he was casual employee. In the attendance sheet for April 1988, it is again not mentioned that he was casual employee but there is interpolation in his name. Singh has been changed to read as Sharma. Similar overwriting is there in the attendance register for May 1999. Therein, too, word casual is not there. In the attendance register for June 1988 there is also a tinkering with `Sharma' and `Singh' and no mention of his being a casual employee has been made there.

13. In the attendance register for July 1988 name of Begh Raj Singh has been correctly written but not shown as casual. In this very attendance sheet there is interpolation in the name of Jai Pratap Singh. Initially the name written was Jai Prakash Singh. The word casual has been inserted in the open space in column meant for rank. Similar insertion has been made against the name of Sushila Rani. Similarly, the word casual appears to have been inserted against the names of Anju Jureja, Babita Sachdeva, Shashi Gupta, Sunita Pureja, Kusum Rani, Gur Charan Kaur, Manju, Swagat Mukhreja, Jai Pratap Singh and Sushila Rani. The subsequent insertion of word casual as having been made against their names is quite evident.

14. In the Attendance register for August 1988, out of 22 employees 10 employees have been shown as casual. There is interpolation in this sheet of the register in the names of Sushila and Jai Pratap and that apart, the words casual have been inserted subsequent to the preparation of attendance sheet for serving the school a specific purpose. Similar is the position of the attendance for the month of September 1988. In the attendance register for the month of October, November, December 1988 and January, February, March 1989 instead of using the word casual only one alphabet `C' has been used.

15. The above facts and figures leave one in no manner of doubt that the non-appearance of the plaintiff before the Defendants for more than 2 dozen dates requiring their attendance was a purposeful one. They wanted to gain time so that in between they could manipulate their record of their favour. In this attempt of theirs, they have succeeded as can be seen from interpolations and insertions as described above. So, for all this, it is held that at the time of

> inspection of the premises of the plaintiff there were in the position, 22 employees all of whom were regular and whole timers and not casual employees or part timers as contended. ...."

It is clear from a reading of aforementioned observations that a firm finding of fact has been recorded that there were 22 employees and the plaintiff had tried to interpolate the record in order to show that some employees were casual/part time employees and were wrongly included in the said list.

Today at the time of hearing I have again perused the attendance register exhibited as Ex.P4. A reading of the same with the naked eye shows that the name of Begh Raj Singh has been interpolated to make it to read as Begh Raj Sharma. I am therefore of the opinion that the findings recorded by the lower Appellate Court are based on a correct reading of the documents and do not suffer from any infirmity. It is therefore established that the number of employees in the institution were more than 20 and hence the order passed by the authority under the Act is valid and justified. I therefore find no merit in this regular second appeal and the same is accordingly dismissed.

(P.S.PATWALIA)
JUDGE

September 12, 2006.

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